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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,146	11/17/2000	Christopher T. Boyle	6006-018	6734

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EXAMINER

MILLER, CHERYL L

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 04/30/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/716,146

Applicant(s)

BOYLE, CHRISTOPHER T. *CM*

Examiner

Cheryl Miller

Art Unit

3738

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 14 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 2-10 and 12-25.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 8.
10. ☐ Other: \_\_\_\_\_

cm

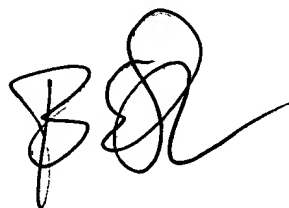
*Cheryl Miller*

Continuation of 2. NOTE: New claims 26-28 raise new issues that will require further consideration and search, such as claim 28, which includes the new limitation of a void space comprising a plurality of independent internal cavities along the length of the structural elements..

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments filed April 14, 2003 have been fully considered but they are not persuasive. The examiners position is believed to be adequately described in the final office action mailed February 12, 2003. However, for further clarity, a response to applicant's arguments follows. Applicant has argued that neither Brown et al. (USPN 6,071,305) nor Yan (USPN 5,843,172) disclose an endoluminal stent comprising a void space between a first and second layer. Brown discloses an endoluminal stent (11, 111, 40) for delivering a bioactive agent (23) to a situs in a body comprising a plurality of interconnected structural elements (112) forming a radially expandable generally tubular member (see figure 18; stents are not limited to helical stents, the stents may be tube stents, roving wire, wire mesh, etc, col.7, lines 34-39), at least some of the plurality of structural elements (112) having a wall thickness comprising a first layer and a second layer covering the first layer (the first and second layers are defined by the cavity, see figure 12, or figure 6, which may have a square cross section, col.6, lines 1-5, which would form layers, col.6, lines 1-5) a void space (20, 114) intermediate the first and second layers and enclosed therebetween, a plurality of pores (22, 28, or pores in a semi permeable micro porous stent material, col.10, lines 36-40) passing through at least one of the first and second layers communicating with the void space (20, 114) and at least one bioactive agent (23) retained within the void space (20, 114) and elutable through the plurality of pores (fig.6, 12, and 18).

In regards to the Yan reference, Yan discloses all limitations recited in claim 16. Yan's stent is disclosed to have void space (larger pores) between two layers (110, 112), the void space is interpreted to be any one of Yan's pores or gaps disclosed (figures 6, 11, 12, and respective portions of the specification).

Applicant also argued that Brown and Yan disclose a manufacturing process different than the applicants manufacturing process. Because claim 16 is a product claim, the patentability of a product does not depend on its method of production. The end product is the same, a stent having a void space between two layers. The void space creates or defines the two layers, the first layer being above the void and the second layer being below the void. Yan and Brown both disclose a stent having two layers and a void space therebetween.



BRUCE SNOW  
PRIMARY EXAMINER